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5 Attorneys for  
JANINA M. HOSKINS,  
6 Chapter 7 Trustee

7  
8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11 In re  
12 BRUGNARA PROPERTIES VI,  
13 Debtor.

Case No. 17-30501 DM  
Chapter 7

**TRUSTEE'S RESPONSE TO AMENDED  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
(Paul Greenfield / 224 Sea Cliff Avenue)**

15 Date: June 13, 2019  
16 Time: 9:00 a.m.  
Place: 450 Golden Gate Avenue, 16<sup>th</sup> Floor  
Courtroom 17  
Hon. Dennis Montali  
San Francisco, CA 94102

18  
19 Janina M. Hoskins, Chapter 7 Trustee of the estate of Brugnara Properties VI, files this  
20 response to the Amended Motion for Relief From Automatic Stay filed by Paul Greenfield, *pro se*  
21 (the "Motion") and represents as follows.

22 **I. BACKGROUND TO APRIL 25, 2019**

23 The Debtor filed for relief under Chapter 11 of the Bankruptcy Code on May 22, 2017.

24 In addition to the Debtor attempting to confirm a plan, hearings were held regarding the  
25 motion of Dakota Note, LLC, a secured party ("Dakota Note") to appoint a Chapter 11 trustee,  
26 which was supported by other secured creditors and the United States Trustee.

27 In January 2018, the Bankruptcy Court entered its order disapproving the Debtor's plan and  
28 disclosure statement. The Debtor's attempt to confirm a plan of reorganization resulted in virtually

1 unanimous creditor objections to the Debtor's plans and disclosure statements. At a hearing in  
2 January 2018, the Bankruptcy Court granted the motion of Dakota Note and entered its Order  
3 Approving Motion for Appointment of Chapter 11 Trustee on January 8, 2018 (Docket No. 99),  
4 followed by its Order Approving Appointment of Chapter 11 Trustee on January 12, 2018 (Docket  
5 No. 102). A motion to reconsider filed by the Debtor was denied (February 2, 2018 as Docket No.  
6 130).

7 On March 2, 2018, the Trustee filed her Trustee's Report Under Bankruptcy Code  
8 § 1106(a)(5) and Recommendation to Convert Case to a Case Under Chapter 7 of the Bankruptcy  
9 Code [11 U.S.C. § 1106(a)(5)] (Docket No. 139). Her recommendation was supported by various  
10 secured creditors.

11 At a hearing on March 30, 2018, the Court accepted the Trustee's recommendation and  
12 converted the case to a case under Chapter 7 of the Bankruptcy Code. On April 3, 2018, the Court  
13 entered its Order Converting Chapter 11 Case to a Case Under Chapter 7. On April 4, 2018, the  
14 United States Trustee filed its Appointment of Trustee, naming the Trustee as Chapter 7 Trustee of  
15 the converted case (Docket No. 156).

16 When the case was converted to a case under Chapter 7, motions for reconsideration were  
17 filed. Mr. Greenfield filed his Defendant Greenfield's Objection to Brugnara Properties VI Motion  
18 for Reconsideration on April 13, 2018, Docket No. 173, a copy of which is annexed as Exhibit A  
19 to the Declaration of Michael A. Isaacs in Support of Trustee's Response to Amended Motion for  
20 Relief From Automatic Stay (Paul Greenfield / 224 Sea Cliff Avenue) (the "Isaacs Declaration").  
21 As the Court is aware, Mr. Greenfield has been an active participant in this case.

22 On May 7, 2018 the Court heard the Trustee's Motion to Reject Agreement Pursuant to 11  
23 U.S.C. § 365(a), which motion sought to reject an employment agreement between the Debtor and  
24 Kay Brugnara ("Employment Agreement") that allowed her to occupy the property at 224 Sea Cliff  
25 Avenue, San Francisco, California (the "Property"). As with the order converting the case, Mr.  
26 Greenfield also supported the Trustee's motion to reject the Employment Agreement between the  
27 Debtor and Kay Brugnara. Mr. Greenfield filed Defendant Greenfield's Joinder to Trustee's Motion  
28 to Reject "Executory Contract" and Opposition to Motion to Stay, a copy of which is annexed to

1 the Isaacs Declaration as Exhibit B. The Court entered its Order Rejecting Agreement on May 9,  
2 2018 (Docket No. 236).

3 Thereafter, four appeals were filed:

4 (A) Of the Bankruptcy Court's order dated April 16, 2018 denying Appellant's motion  
5 for reconsideration of the Order Converting Case to a Case Under Chapter 7, USBC Docket No.  
6 176, 3:18-cv-02787 WHA, Brugnara Properties VI, Debtor:

7 (i) Appeal by the Debtor's president and shareholder,  
8 Kay Brugnara, Case No. 3:18-cv-02822 WHA

9 (ii) Appeal by Luke Brugnara, the president's husband,  
10 Case No. 3:18-cv-02823 WHA

11 (B) of the Bankruptcy Court's Order Rejecting Agreement, Kay Brugnara's individual  
12 appeal, USBC Docket No. 238, 3:18-cv-03440 WHA.

13 On June 7, 2018, the Honorable William Alsup, United States District Judge, entered his  
14 Order Granting Emergency Motions to Stay in 3:18-cv-02787 WHA and Case No. 3:18-cv-02822  
15 WHA, barring the Trustee from selling the Property. It ordered the Trustee as follows: "The trustee  
16 shall not sell [the Property] or evict Kay Brugnara until the Bankruptcy Court holds an evidentiary  
17 hearing and makes written findings regarding whether or not the Debtor is a nominee and/or alter  
18 ego of Luke Brugnara." An authentic copy of the Order Granting Emergency Motions to Stay is  
19 attached to the Isaacs Declaration as Exhibit C.

20 At the time of the initial hearing on the motion for a stay before the United States District  
21 Court ("District Court"), Ms. Brugnara filed declarations and moving papers indicating that what  
22 was at issue was the Trustee's ability to sell the Property. However, at the time of the hearing before  
23 the District Court, the appeal was whether or not there should have been a stay of the order  
24 converting this case to a case under Chapter 7 of the Bankruptcy Code (pursuant to the Trustee's  
25 recommendation under § 1106(a)(5) of the Bankruptcy Code). As this Court is aware, if the  
26 Property were sold, any excess proceeds would be paid to Ms. Brugnara as shareholder of the  
27 Debtor. However, a District Court stay was issued, which initially was contemplated to be "60  
28 days." During the 60-day period, Adversary Proceeding No. 17-03071, *Brugnara Properties VI v.*

1 *Internal Revenue Service, et al.* (the “Adversary Proceeding”) was to be resolved, i.e., validity or  
2 invalidity of the IRS and FTB liens.

3       Thereafter, various hearings were held before the District Court concerning the various  
4 appeals, primarily instigated by Paul Greenfield, the holder of a senior interest to that of Dakota  
5 Note. Annexed to the Isaacs Declaration as Exhibit D is a copy of the Docket from the United States  
6 District Court for what at the time was the lead case: 3:18-cv-02822 WHA, with all related cases  
7 listed. Filings by Mr. Greenfield are highlighted in yellow on the attached docket. On August 14,  
8 2018, as Docket No. 33, Mr. Greenfield filed a motion to vacate the stay imposed by the District  
9 Court, together with a request for judicial notice and related documents. Mr. Greenfield was an  
10 active participant in appeals before the District Court. For example, on October 4, 2018, Mr.  
11 Greenfield’s motion to vacate was heard but denied on October 5, 2018. See Exhibit D, District  
12 Court Docket No. 55.

13       On November 26, 2018, Mr. Greenfield filed his renewed motion to vacate stay, Docket  
14 No. 62, together with supporting documentation. Considering that the District Court issued a stay  
15 pending the summary judgment hearing in the Adversary Proceeding, the Trustee believed that  
16 filing motions to vacate the stay were inappropriate. Initially, it was contemplated that motions in  
17 the Adversary Proceeding would be filed and heard by December 31, 2018. That did not occur.

18       As noted, Mr. Greenfield filed two motions to vacate the stay that were overruled by the  
19 District Court.

20       On December 11, 2018, the District Court entered its Order to File Briefing and Vacating  
21 Hearing, which directed that the “stay issued on June 7 remains in effect.” The Trustee’s appellee  
22 brief was filed. The District Court dismissed three of the four appeals described on Page 3 above.

23       What followed was the government shut-down and parties asking for a stay of the Adversary  
24 Proceeding before the Bankruptcy Court, which was entered by this Court. Based on orders of the  
25 District Court and orders of this Court, the resolution of the Adversary Proceeding, which was  
26 crucial to a determination as to whether or not the District Court would vacate the stay, was stalled.  
27 A status conference in the Adversary Proceeding was set for February 22, 2019.

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1 On February 8, 2019, creditor Dakota Note filed a motion for relief from stay, together with  
2 supporting documentation as Docket No. 287. On February 19, 2019, Mr. Greenfield filed his  
3 Joinder to Motion for Relief From Stay, Docket No. 290. On February 22, 2019, a hearing was held  
4 on the Dakota Note motion for relief from stay. The Court conducted a status conference in the  
5 Adversary Proceeding the same day. At that time, a briefing schedule was set for a hearing on cross-  
6 motions for summary judgment in the Adversary Proceeding. Both matters were continued to April  
7 25, 2019.

8 On April 24, 2019, Mr. Greenfield filed his Supplement to Joinder to Motion for Relief  
9 From Stay as Docket No. 302. At the April 25, 2019 hearing, the cross-motions for summary  
10 judgment in the Adversary Proceeding between the Debtor and the Internal Revenue Service and  
11 Franchise Tax Board were taken under submission. The Dakota Note motion for relief from stay  
12 was taken off calendar, pending a decision in the Adversary Proceeding.

13 In summary, as the above background indicates, Mr. Greenfield has been an active  
14 participant in this case and in the appeals before the District Court.

15 The Trustee does not see why the stay order of the District Court should not also be  
16 applicable to Mr. Greenfield. As noted, the District Court issued an Order Granting Emergency  
17 Motions to Stay, by which it ordered the Trustee as follows: "The trustee shall not sell [the Property]  
18 or evict Kay Brugnara until the Bankruptcy Court holds an evidentiary hearing and makes written  
19 findings regarding whether or not the Debtor is a nominee and/or alter ego of Luke Brugnara."

20 It would make little sense for the Trustee to remain barred from selling the Property by the  
21 District Court's Order Granting Emergency Motions to Stay (Exhibit C to the Isaacs Declaration),  
22 but for Mr. Greenfield to be allowed to foreclose his lien against it.

## 23 **II. CAUSE UNDER BANKRUPTCY CODE § 362(d)(1)**

24 Bankruptcy Code § 362(d) provides that:

25 (d) On request of a party in interest and after notice and a hearing,  
26 the court shall grant relief from the stay provided under subsection  
27 (a) of this section, such as by terminating, annulling, modifying, or  
28 conditioning such stay -

1 (1) for cause, including the lack of adequate protection of an  
2 interest in property of such party in interest;

3 (2) with respect to a stay of an act against property under  
4 subsection (a) of this section, if -

5 (A) the debtor does not have an equity in such  
6 property; and

7 (B) such property is not necessary to an effective  
8 reorganization

9 The Trustee agrees with comments by Mr. Greenfield in his Motion, Page 4, ¶14, whereby  
10 he addresses the issue of “cause.” Mr. Greenfield indicates that, “cause” for granting relief from  
11 stay has no clear definition and is determined on a case-by-case basis,” citing *Christensen v. Tucson*  
12 *Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9<sup>th</sup> Cir. 1990) together with other  
13 citations for the proposition. If ever there were a case where cause should be interpreted in favor of  
14 the Trustee, this has to be it. As indicated above, the Trustee, notwithstanding efforts to move  
15 forward, has been stayed by the District Court. The Adversary Proceeding was stayed by virtue of  
16 a government shut-down. The summary judgment motions are under submission.

17 On Page 4, ¶15 of the Motion, Mr. Greenfield indicates, “the Court may grant relief from  
18 stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy  
19 case, has not made required payments, or is using bankruptcy as a means to delay payment or  
20 foreclosure,” citing *Western Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839, 841 (9<sup>th</sup> Cir.  
21 1986). The Trustee has been diligent in carrying out her duties. She was appointed at the request of  
22 Dakota Note and others and filed her 1106(a)(5) Report Recommending Conversion, which was  
23 supported by creditors and which the Court accepted and converted this case. Thereafter, she has  
24 been ensnarled in litigation before the District Court and filed a substantial appellee brief in the  
25 four appeals, three of which have been dismissed. She has employed a broker and diligently taken  
26 the actions that she can take under the circumstances.

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1     **III.     VALUE OF THE PROPERTY**

2             In the Dakota Note motion for relief from stay on Page 2, ¶6, Dakota Note listed the  
3     voluntary liens against the Property totaling \$13,884,599.94. Mr. Greenfield now lists the total of  
4     voluntary liens at \$14,576,639.95. Motion, Page 4, Lines 2-8. No evidence supports these lien  
5     amounts.

6             No one seems to know the true value of the Property. In his Motion, Mr. Greenfield  
7     indicates, “The present value of the Property is not more than \$15 million.” (Motion, Page 5, Line  
8     27). The Trustee is not sure if Mr. Greenfield bases his value on the Dakota Note motion for relief  
9     from stay, which he apparently seeks to amend, or if this is from his own opinion. The Dakota Note  
10    motion indicated that “present value” was estimated at no more than \$15 million, utilizing an  
11    application to employ a broker (Docket No. 186) in support of that proposition. However, as  
12    indicated in prior documents and statements made before this Court, the Trustee received an  
13    unsolicited \$15 million offer, sight unseen. The listing price is not determinative of value and could  
14    change by the time the Property is actually listed. The Debtor has valued the Property in excess of  
15    \$20 million, believing it has an appraisal. Further, the Debtor argues that the value of the Property  
16    is rising at a substantial rate every year; thus adequately protecting all liens against the Property.  
17    The point is that there is no valid evidence as to the value of the Property. True value can only be  
18    known once the Property is listed and the Trustee sells it (unless the Debtor refinances). The sale  
19    will determine the actual value of this Property. However, based upon what has happened thus far,  
20    it appears there would be competitive bidding for the Property and it could sell for a sum in excess  
21    of the figures that have been mentioned. Further, the assumption seems to be that figures for liens  
22    and interest rates are valid and they will be paid in full, no matter what fees, costs and penalties are  
23    included. The loan balances presented by Mr. Greenfield are hearsay and should be disregarded.

24    **IV.     THE IRS LIEN**

25             As was explained to the Court and based upon information gathered by the Trustee, the IRS  
26     and the FTB have an agreement whereby, notwithstanding the FTB being in “sixth place,” it is  
27     entitled to share in monies paid pursuant to the lien in favor of the IRS. If the IRS lien is determined  
28     to be a nominee lien and enforceable against the Property, it would be in third position, behind

1 roughly \$10 million in debt. The IRS lien, based upon Claim 2-2 filed November 22, 2017, at that  
2 time was in the sum of \$1,809,309.14. Further, under the terms of Bankruptcy Code § 724(b), the  
3 Trustee has an interest in any interest the IRS and FTB have in the IRS recorded lien, as follows:

4  
5 (b) Property in which the estate has an interest and that is subject to  
6 a lien that is not avoidable under this title (other than to the extent  
7 that there is a properly perfected unavoidable tax lien arising in  
8 connection with an *ad valorem* tax on real or personal property of the  
estate) and that secures an allowed claim for a tax, or proceeds of  
such property, shall be distributed

9 (1) first, to any holder of an allowed claim secured by a lien  
10 on such property that is not avoidable under this title and that  
is senior to such tax lien;

11 (2) second, to any holder of a claim of a kind specified in  
12 section 507(a)(1)(C) or 507(a)(2) ... 507(a)(1)(A),  
13 507(a)(1)(B), 507(a)(3), 507(a)(4), 507(a)(5), 507(a)(6), or  
14 507(a)(7) of this title, to the extent of the amount of such  
allowed tax claim that is secured by such tax lien

15 11 U.S.C. § 724(b)(1), (2).

16 Accordingly, the estate has an interest in proceeds from the sale of this Property over and  
17 above any equity that may exist. Copies of the federal tax liens are annexed to the Isaacs Declaration  
18 as Exhibit E.

19 **V. MR. GREENFIELD'S MOTION SHOULD BE DENIED ON PROCEDURAL**  
20 **GROUND**

21 Bankruptcy Local Rule 4001-1 governs motions for relief from stay, as follows:

22 4001-1. Motions For Relief From Stay.

23 (a) Procedure and Supporting Documents.

24  
25 A motion for relief from stay, or for order confirming that no stay is  
26 in effect, shall be so titled and shall be accompanied by the  
27 declaration of an individual competent to testify which sets forth the  
28 factual basis for the motion. The motion shall describe the relief  
sought and shall advise the respondent to appear personally or by  
counsel at the preliminary hearing.



1 (b) Cover Sheet.

2 Every motion for relief from stay, or order confirming that no stay is  
3 in effect, shall be filed with a completed Relief From Stay Cover  
4 Sheet. Relief From Stay Cover Sheets shall be available in the Office  
5 of the Clerk and on the Bankruptcy Court's website.

6 B.L.R. 4001-1(a), (b)

7 Bankruptcy Local Rule 4001-1(g) indicates,

8 (g) Inclusion of an Account Statement.

9 (1) As to motions for relief from the automatic stay wherein the  
10 movant alleges that the debtor has failed to maintain post-petition  
11 payments on an obligation, the motion shall include a post-petition  
12 account statement and a declaration attesting to the statement's  
13 accuracy. Both documents shall be written in language  
14 comprehensible to a lay person, and shall include the following  
15 information:

16 a. a description of the post-petition obligations that have  
17 accrued and are unpaid;

18 b. all payments received post-petition;

19 c. the date each post-petition payment was received;

20 d. the date each post-petition payment was posted to the subject  
21 account, if different from the date received

22 B.L.R. 4001-1(g)

23 To the Trustee's knowledge, Mr. Greenfield has failed to include a Relief From Stay Cover  
24 Sheet. Further, *inter alia*, he has failed to comply with Bankruptcy Local Rule 4001-1(g).

25 In response to the filing of the Motion, the Court's Courtroom Deputy provided Mr.  
26 Greenfield with a list of the needed corrections, in that, no previous motion for relief from stay was  
27 filed, no notice of hearing was filed, no proof of service was filed and no relief from stay cover  
28 sheet was included. Finally, the Courtroom Deputy noted that a fee in the amount of \$181 was not  
paid. To the Trustee's knowledge, there is no record that Mr. Greenfield complied with all of the  
instructions provided by the Court.

1 Mr. Greenfield has presented no competent evidence that he holds an interest in the  
2 California Home Loans lien that he seeks to assert. Attached as Exhibit A to the Declaration of Paul  
3 Greenfield in Support of Motion for Relief From Automatic Stay (the "Greenfield Declaration")  
4 filed in support of the Motion (Docket 306), there is a section entitled "Assignment of Note Secured  
5 by Deed of Trust." It is blank. Greenfield Declaration, Exhibit A, Page 2.

6 **VI. CONCLUSION**

7 As indicated at the time of the hearing on the motion for relief from stay filed by Dakota  
8 Note, the Trustee has had her hands tied by a stay issued by the District Court which arguably is  
9 applicable to Mr. Greenfield. It would make no sense to have the District Court stop the Trustee  
10 from selling the Property, yet at the same time allow a secured party (that filed two motions to  
11 vacate the stay) to go forward and foreclose against it. Accordingly, at a minimum, Mr. Greenfield  
12 should seek clarification from the District Court that the stay is not applicable to him. As indicated,  
13 he filed two motions to vacate the stay imposed by the District Court - both unsuccessful. The  
14 United States government shut down; thus derailing the schedule that otherwise would have been  
15 applicable for the Adversary Proceeding to be possibly completed by way of competing motions  
16 for summary judgment. The motions for summary judgment in the Adversary Proceeding are under  
17 submission and an opinion will be issued. No relief from stay should be granted at this time. It is  
18 inequitable, considering that Mr. Greenfield participated in seeking the appointment of the Trustee,  
19 and also participated in the appeals pending before the District Court.

20  
21 DATED: June 11, 2019

DENTONS US LLP

22  
23 By: /s/Michael A. Isaacs

24 MICHAEL A. ISAACS  
25 Attorneys for JANINA M. HOSKINS,  
26 Chapter 7 Trustee  
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